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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,427	03/10/2004	Edward G. Gatliff	APPLIED 3.0-008	4412
530	7590	01/20/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/797,427	GATLIFF, EDWARD G.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Francis T. Palo	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 25 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/14/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species-II (claims 1-9 and 19-25) in the reply filed on 11/07/05 is acknowledged.

Claims 20-24 are further withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species; as the access tubing is not depicted in the elected species figures (3-8).

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5, 7, 8 and 25** are rejected under 35 U.S.C. 103(a),  
as being unpatentable over Ploeger (US 4,457,102) 1984,  
in view of Morey (US 3,828,473) 1974.

Regarding **claim-1**:

Ploeger '102 teaches a method of growing commercially valuable grapevines as claimed in the instant steps (a-e), wherein steps (f) and (g) are inherent to the genus planted. Ploeger does not specifically teach harvesting commercially valuable crops from trees as claimed.

Morey '473 is relied upon for the obviousness of growing commercially valuable trees; specifically, deep or tap rooted shade trees in a deep container partially in the ground (Abstract), and especially Pistachio species (column-1, lines 46-48); again the harvesting of the tree crops and transportation of said crops being inherent features.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have utilized the method of Ploeger to cultivate commercially valuable trees as claimed and as taught by Morey, as further such modification is merely an alternate equivalent production means performing the same intended function of developing deep tap roots and forcing roots to grow downwardly.

Regarding **claims 2 and 3**:

The discussion above regarding claim-1 is relied upon.

Ploeger teaches (Abstract) lining the planting hole with a material impervious to water and nutrients, as claimed.

Regarding **claims 4 and 5**:

The discussion above regarding claim-2 is relied upon.

Ploeger teaches a tube (20) is impervious to water and roots and may be made from plastic (flexible), paper coated with plastic (flexible), metal (rigid), as claimed (see column-2, lines 10-15).

Regarding **claims 7 and 8**:

The discussion above regarding claim-4 is relied upon.

Ploeger teaches a tube (20) may be made from plastic (flexible), paper coated with plastic (flexible) and metal; plastic coated paper is readable as disposable and metal is readable as permanent as is plastic, as claimed.

Regarding **claim-25**:

The discussion above regarding claim-4 is relied upon.

Ploeger teaches a berm-like structure (22), as claimed.

**Claim-9** is rejected under 35 U.S.C. 103(a),  
as being unpatentable over Ploeger '102 and Morey '476  
as applied to claim-4 above,  
and further in view of Gatliff (US 5,829,191) 1998.

Regarding **claim-9**:

The discussion above regarding claim-4 is relied upon.

Ploeger is silent as to providing an additive in at least a portion of the walls to create a seal, as claimed.

Gatliff '191 teaches a method of growing trees to develop long root systems in lined holes, as does Ploeger '102, and further adds the step of sealing as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the method of Ploeger to include the sealing step as taught by Gatliff, for the known advantages of that operation.

***Allowable Subject Matter***

**Claim-6** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form (**or simply incorporated into claim-1**) including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gavrusevich '405A1 teaches a planting hole digging procedure, lining the walls of the hole with a drainage layer of plant origin material and applying a perforated plastic liner.

Szochet '116 teaches a method of planting trees and a watering tube (3).

Ferrand '325 teaches a propagation device utilizing a liner in a liner.

Moorman '279; Albrecht '642 and '967; and Hill '302, teach methods of downward root growth.

McKey '890; Bui '169; and Pattyn '528, teach berming.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*

Francis T. Palo  
Primary Examiner  
Art Unit 3644